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Message Text

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ACTION IO-06

INFO OCT-01 ARA-10 EUR-12 ISO-00 AF-10 EA-10 NEA-10 RSC-01

L-02 FRB-01 OMB-01 TAR-01 SP-02 SWF-01 AGR-10 AID-05

CIAE-00 COME-00 EB-06 INR-07 LAB-03 NSAE-00 OIC-02

SIL-01 STR-04 TRSE-00 CIEP-02 CEA-01 ACDA-10 SS-20

NSC-05 DRC-01 /145 W
---------- 101706
R 112220Z OCT 74
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 6307
INFO AMEMBASSY MEXICO
USMISSION OECD PARIS
USMISSION EC BRUSSELS
USMISSION GENEVA

UNCLAS SECTION 1 OF 2 USUN 3994

TREASURY PASS BRADFIELD

E.O. 11652: N/A
TAGS: EGEN, UNCTAD
SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES (CERDS)

REF: USUN 3935

1. A.M. MEETING OF SUB-GROUP 1 (DEALING WITH CERDS PARA 2) BEGAN WITH PRESENTATION BY MEMBERS OF GROUP B OF GROUP B PRELIMINARY REACTIONS TO G-77 TEXT REPORTED REFTEL. GROUP B MEMBERS PRESENTED VIEWS ON ENTIRE TEXT, AFTER WHICH THERE WAS SHORT BREAK FOR G-77 CAUCUS. AFTER BREAK, G-77, VIA MEXICO, IRAQ, YUGOSLAVIA AND ALGERIA, PRESENTED PRELIMINARY REACTION TO GROUP B VIEWS.

2. ON PARA 2(1) OF G-77 TEXT, UK (FREELAND) EXPRESSED DOUBT AS TO NEED OF WORD "FREELY". UK STATED THAT IT
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IS UNDERSTOOD A STATE, IN EXERCISE OF ITS SOVEREIGNTY,

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MAY PLACE OR ACCEPT RESTRICTIONS ON SUCH EXERCISE. TO SAY "FREELY EXERCISE FULL PERMANENT SOVEREIGNTY" MAY GIVE RISE TO IMPLICATION THAT A STATE MAY LEGALLY AND UNILATERALLY RID ITSELF OF SUCH SELF-IMPOSED RESTRICTIONS. WHILE CERTAIN LATTER IMPLICATION NOT G-77 INTENTION, UK SOUGHT CLARIFICATION. UK ALSO SOUGHT CLARIFICATION WHAT IS MEANT BY FULL PERMANENT SOVEREIGNTY OVER (A) "ALL ITS WEALTH", AND (B) ITS "ECONOMIC ACTIVITIES".

3. RE UK POINTS, MEXICO (GONZALEZ-GALVEZ) STATED G-77 NOT CONVINCED BY GROUP B ARGUMENTS RPT ARGUMENTS, BUT WOULD TAKE THEM UNDER CONSIDERATION. AS TO "FREELY" MEXICO STATED THAT AT TIMES IT IS NECESSARY TO EMPHASIZE A POINT TO MAKE ITS MEANING CLEAR. MEXICO CONTINUED THAT, NEVERTHELESS, G-77 COULD CONSIDER DROPPING "FREELY" IF THERE IS APPROPRIATE MENTION OF "COERCION" IN PARA 2. IRAQ ADDED THAT "FREELY" WAS INCLUDED IN SUBPARA BECAUSE WE HAVE SEEN THAT EXERCISE OF PERMANENT SOVEREIGNTY HAS BEEN CONSTRAINED BY VARIOUS FACTORS - EVEN AT TIMES, THREAT OF MILITARY FORCE. "WEALTH" NEEDED NO FURTHER EXPLANATION. BY "ECONOMIC ACTIVITIES" IS MEANT ALL ACTIVITIES IN A STATE INCLUDING THOSE RUN BY FOREIGN ENTITIES. THEY SHOULD BE SUBJECT TO HOST STATE'S PERMANENT SOVERIEGNTY.

4. ON PARA 2(2)(A), BELGIUM (PUTMAN) ASKED WHAT "AND EXERCISE AUTHORITY OVER" MEANT; ADDING THAT IF IT MEANT RIGHT OF HOST STATE TO MANAGE FOREIGN INVESTMENT, IT WOULD POSE GREAT DIFFICULTIES.

5. YUGOSLAVIA RESPONDED THAT G-77 BASIC POSITION IS THAT "REGULATE" IN PARA 2(2)(A) REFERS TO STATE'S ABILITY TO PASS LEGISLATION. G-77 ALSO WANT LANGUAGE WHICH CONFIRMS STATE'S RIGHT TO ADMINISTRATIVELY CONTROL FOREIGN CAPITAL CONSISTENT WITH SUCH LEGISLATION. G-77 HAS PROPOSED "AND EXERCISE AUTHORITY OVER", A NEW FORMULATION OF THAT IDEA, AND IS WILLING TO ENTERTAIN GROUP B REFORMULATIONS OF THE IDEA.

6. ON PARA 2(2)(B), CANADA (STANFORD) STATED PRESUMPTION
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THAT IT WAS NOT VIEW OF G-77 THAT INVESTMENT AGREEMENTS COULD BE TERMINATED BY HOST STATE WHENEVER HOST STATE THOUGHT IT IN ITS INTEREST TO DO SO. HOWEVER LANGUAGE OF THIS SUBPARA COULD LEAD TO THAT CONCLUSION. CANADA STATED PERHAPS G-77 MEANT STATES IN THE EXERCISE OF THEIR SOVEREIGNTY MAY ENTER INTO AGREEMENTS FOR FOREIGN CAPITAL IN ORDER TO STRENGTHEN THEIR NATIONAL SOVEREIGNTY AND DEVELOP THEIR NATIONAL ECONOMY, AND SUCH AGREEMENTS SHALL

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BE OBSERVED IN GOOD FAITH. IF LATTER IS ACTUAL G-77
POINT, ISSUE IS ONLY ONE OF DRAFTING. CANADA RECALLED
UK REMARKS REGARDING "FREELY" AS BEING RELEVANT IN THIS
SUBPARA ALSO, AND NOTED THAT G-77 TEXT DID NOT TAKE INTO
ACCOUNT THE MUTUALITY OF INTERESTS (READ: BUSINESS
INTERESTS) INVOLVED IN INVESTMENT OF FOREIGN CAPITAL.

7. MEXICO RESPONDED THAT FOR TIME BEING G-77 HAS TAKEN
INTO ACCOUNT CANADA REMARKS, AND IT IS POSSIBLE THAT
DIFFERENCE MAY BE ONLY ONE OF DRAFTING.

8. UK (FREELAND) SPOKE ON PARA 2(2)(C). FYI REFTEL CONTAINS
A FULL TEXT OF PARA 2(2)(C). HOWEVER TEXT OF DOCUMENT
ACTUALLY CIRCULATED BY G-77 SHOWED ONLY THE FOLLOWING FOR
THAT PARA: "(BEGIN BRACKETS) AS AGREED (END BRACKETS)".
IT WAS CLEAR FROM ORAL REPRESENTATION OF MEXICO AT THAT TIME
THAT REFERENCE WAS TO TENTATIVELY AGREED GENEVA TEXT WITHOUT
ANY RESERVATIONS. ACCORDINGLY LATTER TEXT CONVEYED PARA 2(2)(C)
REFTEL. END FYI. UK MADE PROCEDURAL POINT THAT G-77 TEXT
WAS NOT FULLY ACCURATE SINCE GROUP B AGREEMENT ON GENEVA PARA
2(2)(C) CONTINGENT ON AGREEMENT ON PARA 2 AS A WHOLE.
ADDITIONALLY, ONE GROUP-B DEL HAD SUBSTANTIVE DIFFICULTY WITH
THIS SUBPARA, THOUGH LATTER DIFFICULTY MIGHT ALSO BE
RESOLVED IN CONTEXT OF PARA 2 AS A WHOLE.

9. MEXICO ACKNOWLEDGED GROUP B CONTINGENT AGREEMENT ON
PARA 2(2)(C) BUT EXPRESSED DISMAY THAT SOME DEL WAS NOW
RAISING NEW AND SUBSTANTIVE DISAGREEMENT ON SUBPARA. IN
RESPONSE FRANCE (CHOLLET) STATED IT WAS GROUP B DEL
RAISING SUBSTANTIVE OBJECTION. EXPLAINED THAT IS DIFFI-
CULTY WITH PARA 2(2)(C) WAS THAT SUBPARA SUGGESTED IF A
STATE DISAGREES WITH ACTION TAKEN WITH RESPECT TO ONE OF
ITS NATIONALS BY A NATIONALIZING STATE, SUBPARA REQUIRES
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FORMER STATE TO COOPERATE WITH NATIONALIZING STATE.
MEXICO RESPONDED THIS ISSUE WAS RAISED AT MEXICO CERDS
SESSION, AND MET WITH INSERTION IN PARA 2(2)(C) OF
PHRASE "WITH FULL REGARD FOR ITS SOVEREIGN RIGHTS".

10. US (SCHWEBEL) SPOKE ON PARA 2(2)(D), MAKING FOLLOWING
POINTS: (A) RE "APPROPRIATE COMPENSATION": THIS TERM
MAY BE SATISFACTORY IF APPROPRIATE COMPENSATION IS LINKED
TO PROPER STANDARD, SINCE APPROPRIATE ITSELF IS VAGUE.
RECALLED IN UNGA 1803 APPROPRIATE COMPENSATION WAS LINKED
TO DOMESTIC AND INTERNATIONAL LAW. SUCH LINKAGE IS
MISSING HERE. ACCORDINGLY, GROUP B WOULD LIKE TO KNOW
WHAT APPROPRIATE COMPENSATION MEANS HERE; (B) RE "SHOULD":
USE OF "SHOULD" IN PLACE OF "SHALL" FURTHER WEAKENS
STANDARD TO BE APPLIED; AND (C) RE "PROVIDED THAT ALL

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RELEVANT CIRCUMSTANCES CALL FOR IT": DOES THIS REALLY MEAN
THAT WHERE A STATE NATIONALIZES IT SHOULD PAY APPROPRIATE
COMPENSATION PROVIDED IN ITS OPINION ALL RELEVANT CIRCUM-
STANCES CALL FOR PAYMENT? IF SO, DOES THIS SUBPARA MERELY
REFER TO "POSSIBLE COMPENSATION"? AND IN WHAT CASE HOW
CAN GROUP B BE EXPECTED TO ACCEPT THIS SUBPARA?

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ACTION IO-06

INFO OCT-01 ARA-10 EUR-12 ISO-00 L-02 FRB-01 OMB-01 TAR-01

SP-02 SWF-01 AGR-10 AID-05 CIAE-00 COME-00 EB-06

INR-07 LAB-03 NSAE-00 OIC-02 RSC-01 SIL-01 STR-04

TRSE-00 CIEP-02 CEA-01 AF-10 EA-10 NEA-10 ACDA-10

SS-20 NSC-05 DRC-01 /145 W
---------- 101794
R 112220Z OCT 74
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 6308
INFO AMEMBASSY MEXICO
USMISSION OECD PARIS
USMISSION EC BRUSSELS
USMISSION GENEVA

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11. ALGERIA RESPONDED SAYING G-77 FELT PARA 2(2)(D) WAS
BALANCED, HAVING DROPPED REFERENCE TO "DOMESTIC LAWS" AND
REPLACED "POSSIBLE" BY "APPROPRIATE". ALGERIA ADDED THAT
SOMETIMES WE MAY FIND THAT COMPENSATION IS NOT DUE BY
NATIONALIZING STATE, BUT DUE BY NATIONALIZED COMPANY.
ALGERIA CONCLUDED THAT IF GROUP B WANTED TO TIGHTEN
LANGUAGE OF PARA 2(2)(C), IT WOULD ALSO BE NECESSARY ADD
CLAUSE ALONG FOLLOWING LINES "AND TO COMPENSATION DUE
BY THE COMPANY NATIONALIZED." TO AVOID LATTER GROUP B
SHOULD ACCEPT PRESENT TEXT.

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12. FRANCE SPOKE ON THE NEXT SUBPARA. FYI. THIS
PARA REPORTED REFTEL AS UNNUMBERED SUBPARA BETWEEN SUB-
PARAS 2(2) AND 2(3). IN TEXT CIRCULATED BY G-77, IT IS
UNNUMBERED SUBPARA IMMEDIATELY FOLLOWING PARA 2(2)(D).
CHANGE WAS MADE ON REFTEL BECAUSE G-77 TEXT STYLISTICALLY
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INCORRECT. END FYI. FRANCE STATED IT WAS NOT APPROPRIATE
HAVE THIS SUBPARA UNDER CHAPEAU SAYING "EACH STATE HAS
THE RIGHT", RATHER SUBPARA DESCRIBED A DUTY OF STATES.
ALSO, FRANCE STATED "RECOURSE SHALL BE HAD TO NATIONAL
JURISDICTION OF NATIONALIZING STATE" SEEMS TO LIMIT THE
PERMISSIBLE RESOURCES OF AN ENTITY NATIONALIZED. IT
SHOULD BE REPHRASED ALONG LINES THAT "LOCAL REMEDIES SHALL
BE EXHAUSTED FIRST". FURTHER, THE TEXTS AGREED AT GENEVA
REFLECTED PEACEFUL SETTLEMENT PROVISIONS FOUND IN
THE UN CHARTER. SUCH PROVISIONS SHOULD ALSO BE FOUND IN
THIS TEXT.

13. ALGERIA REPLIED THAT THIS SUBPARA WAS INTENDED AS
LAST SENTENCE OF PARA 2(2)(D). IT WAS INTENDED TO COVER
ALL POSSIBILITIES FOR PEACEFUL SETTLEMENT CONSISTENT WITH THE
PRINCIPLE OF FREE CHOICE OF MEANS. MEXICO ADDED
THAT FRENCH POINT ON EXHAUSTION OF LOCAL REMEDIES WAS NOT PART
OF TEXTS DEVELOPED AT GENEVA. FURTHER,MEXICO ARGUED G-77 STU-
DIOUSLY AVOIDED CITING UN CHARTER ARTICLE 33, ON PEACEFUL
SETTLEMENT, BECAUSE IT RAISES DIFFICULTIES FOR SOME DELS,
NOTABLY SOCIALIST COUNTRIES.

14. CANADA SPOKE ON PARA 2(3), STATING GROUP B FOUND FIRST
SENTENCE OF PARA 2(3) PARTICULARLY ENCOURAGING AND ONE OF
ELEMENTS IN PACKAGE DEAL THAT LEAD US TO BELIEVE REAL
PROGRESS BEING MADE. AS TO SECOND SENTENCE DEALING WITH
COERCION, CANADA, LEAVING ASIDE WHETHER ANY PROVISION
ON COERCION NECESSARY OR DESIRABLE, ASKED WHY PRESENT
LANGUAGE DEALT ONLY WITH COERCION BY EXPORTING COUNTRY
AND NOT IMPORTING COUNTRY.

15. MEXICO RESPONDED G-77 READY TO DROP PARA 2(3) ENTIRELY
IF GROUP B WANTED TO DELETE REFERENCE TO COERCION.
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